No. 71-1179

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

Supreme Court, U. S.
FILED
MAR 14 1972
MICHAEL RODAK, JR., CLERK

AMOCO PRODUCTION COMPANY,
Petitioner,

v.

LELAND C. WAECHTER, *et al.*, and
THE LAND AND ROYALTY OWNERS OF LOUISIANA,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

J. P. HAMMOND
WM. H. EMERSON
Amoco Production Company
P. O. Box 591
Tulsa, Oklahoma 74102

T. J. FILES
R. H. LANDT
Amoco Production Company
Security Life Building
Denver, Colorado 80202

Attorneys for Petitioner

March 14, 1972

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Amoco Production Company (Amoco) petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the District of Columbia Circuit entered in this case on December 17, 1971.[1]

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[1] The names of the respondents comprising Leland C. Waechter, *et al.*, are set forth in the Appendix A printed in this petition. Such respondents were included in the group of respondents Carl F. Matzen, *et al.*, below. Appendices B through E to this petition are the separate Appendix filed in this Court by Mobil Oil Corporation with its Petition in Case No. 71-1169. Respondent The Land and Royalty Owners of Louisiana is an association of royalty interest owners.

OPINIONS BELOW

The opinion of the Court of Appeals (Mobil, Pet. App. C)[2] is not yet reported. The opinion and orders of the Federal Power Commission (Mobil, Pet. App. D, pp. 41-80) are reported at 42 FPC 164-187. The opinion of the Federal Power Commission hearing examiner (Mobil, Pet. App. D, pp. 81-107) is reported at 42 FPC 187-198.

JURISDICTION

The judgment of the Court of Appeals was entered on December 17, 1971 (Mobil, Pet. App. B), and this petition is filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1) and Section 19(b) of the Natural Gas Act, 15 U.S.C. § 717r (b).

STATUTE INVOLVED

Sections 1(b), 2(6), 4(a), 4(c), 4(d), 4(e), 5(a) and 19(b) of the Natural Gas Act, 52 Stat. 821 (1938), as amended, 15 U.S.C. §§ 717-717w, are involved and are reproduced at Mobil, Pet. App. E. Section 1(b) of the Natural Gas Act, the principal statutory provision initially involved, provides:

> "The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

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[2] "Mobil, Pet. App." refers to the separate Appendix filed in this Court by Mobil Oil Corporation with its petition in the case cited in footnote 1, *supra*.

QUESTION PRESENTED

During the last decade, the owners of royalty interests in natural gas who assert a contractual right to payment at the current market price of natural gas began demanding such payment regardless of lower rates prescribed in the Federal Power Commission rate schedules covering the sale of the gas in interstate commerce. Under the decision below, royalty interest owners can escape regulation of rates under the Natural Gas Act by contracting for payment at the current market value of natural gas. The question thus presented is:

> Whether owners of royalty interests in natural gas sold subject to Commission jurisdiction who have a contractual right to be paid the current market value of gas may be paid prices above the rates prescribed in rate filings that have been approved by the Commission under Sections 4 and 5 of the Natural Gas Act as covering the sale of such gas.

STATEMENT

The proceedings from which this case arises are a result of claims by owners of royalty interests in the Hugoton Gas Field in the State of Kansas that, regardless of Federal Power Commission orders fixing lower rates, they are entitled to be paid the current market price for their 1/8th interest in gas sold under Amoco Production Company Federal Power Commission Gas Rate Schedule No. 84. The market price to which they claim entitlement substantially exceeds the 12.5¢ per Mcf area ceiling rate applicable to such gas under the Commission's decision in *Area Rate Proceedings (Hugoton-Anadarko Area)*, FPC Opinion No. 586, 44 FPC 761 (1970). The question presented is the applicability of Federal Power Commission regulation under the Natural Gas Act (15 U.S.C. §§ 717, *et seq.*) to the rates paid such royalty interest owners for their 1/8th interest.

On July 15, 1964, royalty interest owners commenced Leland C. Waechter, et al. v. Amoco Production Company, Case No. 4656, District Court, Stevens County, Kansas, in which they claim (1) the current market value of the gas sold under Amoco Production Company Rate Schedule No. 84 is substantially in excess of the Commission's 12.5¢ per Mcf area ceiling rate, (2) some plaintiffs are contractually entitled to be paid at such current market value because the gas royalty provision of their oil and gas lease expressly so provides, and (3) in addition, all plaintiffs, regardless of royalty clause provisions, are entitled to payment at the market value of gas at the wellhead because the arrangements Amoco made with respect to marketing the gas violated Amoco's fiduciary duties to Waechter, *et al.*, with respect to obtaining a high enough gas price.[3] Further, such plaintiffs alleged that state minimum price orders, such as the Kansas 11 cent order invalidated by this Court in *Cities Service Gas Co.* v. *State Corporation Commission*, 355 U.S. 391 (1958), still apply to their fractional interest in gas sold.

Subsequently, and as a result of the decision of the Court of Appeals for the Fifth Circuit in *J. M. Huber Corp.* v. *Denman*, 367 F.2d 104 (1966), proceedings were commenced before the Federal Power Commission to determine whether its jurisdiction to regulate rates paid for gas purchased by interstate pipeline companies includes regulation of the rates paid to owners of the royalty interests in such gas. As a result of a petition filed by Amoco Production Company, then Pan American Petroleum Corporation, in Docket No. RI67-400, the issue of Commission jurisdiction to regulate rates paid to Waechter, *et al.*, was consolidated with such proceedings. Petitions filed by Mobil Oil Corp. and Western Natural Gas Co. were also consolidated for hearing and decision in

[3] There is a conflict between Waechter, *et al.*, and Amoco as to the relationship of Commission rate regulation to Waechter, *et al.*, claims as to Amoco's fiduciary duties to Waechter, *et al.*

these proceedings. Other producers, state regulatory commissions, royalty owner associations, and local gas distribution companies were permitted to intervene in the consolidated proceeding.

In common with others, the oil and gas leases of Waechter, *et al.*, provide that ownership of the right to revenue from the sale of natural gas is divided between royalty interest owners and working interest owners. Working interest owners are more commonly referred to as independent producers, such as Amoco Production Company in this case. In the instant situation, the independent producer is entitled to retain payment for 7/8ths of the gas produced at the wellhead, and the royalty interest owner is entitled to be paid for 1/8th.[4]

For Federal Income Tax purposes, the income of the royalty interest owners and the independent producers from marketing of the gas is subject to the percentage depletion allowance on oil and gas sales income provided in the Internal Revenue Code (26 U.S.C. §§ 611, 613). A principal difference is that the royalty interest owners' entitlement to income is determined by volumes of gas produced at the wellhead, regardless of whether volumes actually delivered to the interstate pipeline are smaller because of required removal of impurities such as water vapor, carbon dioxide and hydrogen sulfide, and consumption of gas to fuel compressors necessary to raise the pressure to levels acceptable to the interstate pipeline purchaser.

It is as important to establish at the outset what this case does not involve as it is to establish what this case does involve. This case does not involve payments to

[4] In other areas of the country, principally Southern Louisiana, the fractional interest of royalty interest owners is generally much larger and the fractional interest of working interest owners much smaller. In oil and gas leases, the fractional shares are expressed either as a fraction of the gas or as a fraction of the market value of all of the gas produced. Payments to royalty owners are unaffected by such formal differences in terminology. *Cf. Eastern Petroleum Co.* v. *Kerr-McGee Corp.*, 447 F.2d 568 (7th Cir. 1971).

royalty owners prior to production of natural gas, including payments respecting the use of land. The only provision of the oil and gas leases between Amoco and Waechter, *et al.*, that was before the Commission and is before the Court is the provision under which Waechter, *et al.*, are demanding payment of the market value of 1/8th of the gas after it is produced.[5]

This case does not affect payments to royalty interest owners who are unable to show entitlement to more than a fraction of proceeds from the sale of gas subject to Commission jurisdiction. The rates paid to such royalty owners are controlled by Commission area rate decisions such as the decision affirmed in the *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968) and other rate regulatory orders. All royalty interest owners are affected who retain control of the price they are paid by separately retaining the right to be paid the market value of gas produced from the well regardless of the price paid working interest owners, and under the decision below, regardless of the price allowed under Federal Power Commission rate regulation.

In the consolidated hearings before the Commission pursuant to the mandate in *J. M. Huber Corp.* v. *Denman*, *supra*, and on the petitions of Amoco and others, the position of Amoco was supported by the Commission Staff, gas distribution company intervenors, and others who interpret the Natural Gas Act as requiring regulation of rates paid to both working interest owners and royalty interest owners. Evidence was introduced which showed the method of computing payments to royalty interest owners and the oil and gas lease clauses under which such payments are made, and further showed that allowance of claims by royalty interest owners would require drastic modification of the area rate method used in the *Permian*

[5] The record shows that the owner of royalty interests need not be, and often is not, the owner of the land on which the well is drilled and from which the natural gas is produced.

Basin Area Rate Cases, 390 U.S. 747 (1968), and substantial increases in area ceiling rates.

Evidence introduced by royalty interest owners and royalty owner associations emphasized the obligations of parties prior to the time gas is produced and sold in interstate commerce. These parties also introduced evidence that royalty interest owners did not participate in the negotiation of the gas sales contracts that have been filed with the Commission by independent producers and regulated by the Commission.[6]

After cross examination of such evidence, the parties submitted briefs to the Presiding Examiner. The Presiding Examiner issued a decision on June 23, 1968, 42 FPC 187 (Mobil, Pet. App. D, pp. 81-107),[7] that payments to owners of royalty interests attributable to sales of gas are controlled by Commission rate regulation to the same extent as payments to owners of working interests (independent producers). After briefs on exceptions were filed and oral argument on exceptions was heard, the Commission issued its Opinion No. 562, 42 FPC 164, on July 23, 1969 (Mobil, Pet. App. D, pp. 41-80) affirming the Presiding Examiner's decision that payments to royalty interest owners from the sale of gas are subject to Commission rate regulation. The Commission decision omitted provisions in the Presiding Examiner's decision in that, as is the case with independent producers, royalty interest owners claiming entitlement to rates under clauses other than the percentage of proceeds clauses must make separate filings with the Commission.

Amoco and Waechter, *et al.*, filed applications for rehearing. Such applications for rehearing and applica-

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[6] The representatives of Waechter, *et al.*, petitioned to and were granted permission to intervene in the *Hugoton-Anadarko Area Rate Proceeding*, Docket No. AR64-1, but elected not to participate in the proceeding.

[7] References are to separate Appendices filed by Mobil Oil Corporation with its petition in the case cited in footnote 1, *supra*.

tions for rehearing filed by others were denied by operation of law under Section 19(a) of the Natural Gas Act, 15 U.S.C. § 717r(a), because the Commission did not act upon such applications for rehearing within 30 days.

Petitions for review in the Court of Appeals were filed by Amoco and by Waechter, *et al.*, and consolidated with other petitions for a decision in the Court below. On December 17, 1971, the Court below rendered its decision reversing the Commission on the basis that Commission jurisdiction to regulate rates applies only to sellers of natural gas and that owners of royalty interests in gas sold subject to Commission jurisdiction are not sellers of gas because they do not have authority to determine incidents of the sale such as the price to be paid.

The Court below rejected the Commission's interpretation of the Natural Gas Act. The Commission interpreted the Act as not permitting its jurisdiction to regulate rates paid for natural gas to be defeated or limited by doctrines of state law, including the law of sales, that assertedly allow owners of rights to payment from gas to contractually provide that such payments are exempt from rate regulation.

We disagree with the Court's decision that the Natural Gas Act permits persons that the Court below recognizes have a direct economic interest in the sale of natural gas and rates paid therefor to utilize technical concepts of local law of sales to avoid rate regulation by simply casting the transaction in such a form that they (1) surrender the right to legal title and possession of the gas prior to delivery to the interstate pipeline, (2) surrender control over the identity of the pipeline purchaser, and (3) surrender the right to control the daily quantity of gas delivered.

The Court below emphasized that owners of economic interests in sales of natural gas are not sellers within the meaning of the Natural Gas Act where they do not re-

tain control over the price paid (Mobil, Pet. App. C, pp. 29-30). The only royalty interest owners who do not retain direct control over the price paid for their interests are those who are paid a percentage of proceeds from the sale. As shown above, the subject of this case is gas payments to royalty interest owners who *do* retain control over the price paid to them. This case exists because royalty interest owners who have an individual and separate right to be paid the wellhead market value of gas have actively sought to control the price paid to them by demanding payment at such market value regardless of the proceeds of the sale and regardless of the rate for such gas fixed by Federal Power Commission regulation.

REASONS FOR GRANTING THE WRIT

The decision below creates a substantial gap in Commission regulation of natural gas rates that is not contemplated by the Natural Gas Act and if allowed to stand would disrupt the area rate method of regulating natural gas rates and defeat Commission attempts to increase the supply of natural gas available to consumers. The Court below erroneously interpreted the Natural Gas Act so as to permit owners of interests of gas sold in interstate commerce to utilize technical concepts of the law of sales and conveyancing to contractually provide that rates paid to such interest owners will not be affected by Federal Power Commission rate regulation.

1. The Decision Below Involves Issues of Broad Importance that Should Be Reviewed by This Court.

The importance of this case to natural gas consumers and the natural gas industry is similar to *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954), and *United Gas Improvement Co.* v. *Continental Oil Co.*, 381 U.S. 392 (1965) (the *Rayne* case). As in those cases, this case involves questions of wide applicability and importance respecting Commission regulation of rates for gas

sold in interstate commerce and the availability of methods of avoiding such regulation.

This case is similar to the *Phillips* case, *supra*, in that it involves the question of whether rates paid a group of persons from the sale of natural gas, which will be ultimately reflected in the prices paid by ultimate consumers, are subject to Federal Power Commission regulation. This case is analogous to the *Rayne* case, *supra*, in that respondents assert that surrendering certain incidents of common law sales, such as the right to possession of and legal title to gas prior to production of the gas, has the effect of exempting them from regulation of the price paid for their retained economic interest. Yet, as was not the case as to producers' income in the *Rayne* and *Bastian Bay Field*[8] cases, interest in gas that is retained includes the right to percentage depletion on gas sales income and such royalty interest owners claim this deduction for Federal Income Tax purpose under 26 U.S.C. §§ 611, 613.

A common form of gas royalty clause provides that royalty interest owners are entitled to be paid the market value of gas at the wellhead where gas is delivered at a point off the lease premises.[9] Where the delivery point of gas to the interstate pipeline is a central point in the field, it is nearly always a point off the lease premises. In the States of Kansas and Louisiana and in the Gulf Coast Area of Texas substantial amounts of gas are delivered to interstate pipeline companies at plant outlets or a central point in the gas field.[10] In such situations

[8] *Federal Power Commission* v. *Pan American Petroleum Corp.*, 381 U.S. 762 (1965).

[9] The record below shows various gas royalty clauses. See also *Eastern Petroleum Co.* v. *Kerr-McGee Corp.*, 447 F.2d 568 (7th Cir. 1971).

[10] See *Area Rate Proceedings (Texas Gulf Coast Area)*, Docket No. AR64-2, *et al.*, FPC Opinion No. 595 (May 6, 1971); *Area Rate Proceedings (Southern Louisiana Area)*, Docket No. AR61-2, *et al.*, FPC Opinion No. 598 (July 16, 1971); *Area Rate Proceedings (Other Southwest Area)*, Docket No. AR67-1, *et al.*, FPC Opinion No. 607 (October 29, 1971).

payments to royalty interest owners are made at the well-head market value of gas volumes measured at the well-head. Thus, as to a great bulk of gas sold subject to Commission jurisdiction in Louisiana and the Texas Gulf Coast, as well as Kansas, the decision below would mean that rates paid to royalty interest owners are exempt from Federal Power Commission rate regulation.

As to the future, once it becomes generally known and appreciated that insistence upon market value gas royalty clauses carries with it exemption from Federal Power Commission rate regulation, owners of mineral interests will be extremely reluctant to agree to any other type of gas royalty clause.[11] Owners of extensive mineral interests who are in a strong bargaining position will insist upon such contractual exemption from rate regulation.

Under the limitations on Commission rate regulatory authority adopted by the Court below, gas prices paid to other parties such as owners of overriding royalty interests whose authority to determine price, identity of pipeline purchaser and ultimate destination of gas is identical to respondents, also will be exempt from rate regulation. The decision below will encourage parties to provide by contracts or conveyances royalty or similar interests, so that the price for an ever-increasing portion of interstate gas deliveries falls within the gap in rate regulation that is opened by the Court of Appeals opinion. Thus, it can be anticipated that far from diminishing in the future, the impact of the decision below will increase.[12]

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[11] Publications of royalty associations promptly inform mineral owners of new developments. The vigorous prosecution of this case by Respondent The Land and Royalty Owners of Louisiana speaks eloquently of the anticipated economic impact of avoidance of regulation of rates paid to royalty interest owners.

[12] Further, it can be anticipated that state minimum pricing will be revived, as is presently the case in Oklahoma, so that royalty interest owners can apply such minimum prices to their fractional share of gas sold, see pp. 3-4, *supra*.

As shown in the *Permian Basin Area Rate Cases*, 390 U.S. 347 (1968), the area rate method contemplates that royalty interest owners will be paid at the same rate as the working interest owners (independent producers). In this respect, the *Permian* method was carried forward into the *Texas Gulf Coast Area Rate Decision* (FPC Opinion No. 595), the *Southern Louisiana Area Rate Decision* (FPC Opinion No. 598), and the *Other Southwest Area Rate Decision* (FPC Opinion No. 607).

If the decision below is allowed to stand, the Federal Power Commission will have to choose between two courses of action. It can reopen these area rate proceedings to provide for increases in area rates necessary to allow for payment to royalty interest owners of the market value of gas at the wellhead, or it can refuse to reopen such area rate proceedings and allow the gas supply incentive for which consumers are paying under the rates prescribed in such Opinions to be dissipated in payments to royalty interest owners.

Failure to reverse the decision below will disrupt the area rate method of rate regulation and defeat efforts to increase the availability of gas supplies to consumers. Regardless of whether the Commission reopens area rate proceedings and increases area rates to allow for payment of high rates to royalty interest owners, the decision below would result in diverting large sums from natural gas exploration and development to payment of gas royalty. Consumers could expect progressively lower levels of expenditures on development of natural gas supplies per dollar of gas rates paid.

2. The Reversal Below of the Commission Decision as to Its Jurisdiction Conflicts with Controlling Construction of the Natural Gas Act.

In the *Rayne* case, *United Gas Improvement Co.* v. *Continental Oil Co.*, 381 U.S. 392 (1965), this Court rejected arguments by Continental Oil Company that re-

gardless of controlling economic facts, determinations under the Natural Gas Act of what rates can be regulated as rates for gas sales are governed by the technical form of transactions under application of the local law of sales and conveyancing. In rejecting such arguments, this Court held that such determinations are not dependent upon "technical concepts of local law" but upon "significant and determinative economic facts." (381 U.S. at 400-401).

The decision below as to determination of what payments constitute rates for jurisdictional sales subject to Commission regulation accepts the Continental Oil Company argument and rejects the doctrines of statutory interpretation set out in the decision of this Court. The court below was in error when it held that technical concepts of local law are available to owners of royalty interests for use in formulating gas royalty clauses that exempt payment of royalty interests in gas sold from Commission rate regulation. Contrary to the decision of this Court in the *Rayne* case, the court below relied upon contentions that the question before it was Commission jurisdiction over the parties to the instrument at the time the instrument was executed, instead of the question of jurisdiction to regulate payments for the production of gas when gas is produced as provided for in the instrument.

In the instant case, the use of concepts of local law to permit parties to contract for exemptions from rate regulation is less tenable than in the *Rayne* case. Here, the payments which the Commission has asserted jurisdiction to regulate are based upon monthly volumes of gas produced from each gas well. Such payments are not made if gas is not produced and vary each month directly with the amount of gas produced that month. Payments to Continental Oil Company under the instrument before the Court in the *Rayne* case were not made monthly for monthly production of gas and did not increase or de-

crease monthly to reflect increases and decreases in gas production. Where, as here, payments are tied directly to monthly fluctuations in gas production, the decision below is clearly in conflict with the decision by this Court that the payments to Continental under the *Rayne* instrument were subject to Commission regulation.

There, as here, parties seeking to avoid rate regulation argued that relinquishing the right to posession and legal title prior to delivery of gas to interstate pipelines insulated natural gas payments to them from Commission rate regulation. Both in *Rayne* and here, control of the price paid to the owner for the economic interest is retained. Royalty interest owners who have a right to payment at the market value of the gas at the wellhead exercise as full and as separate and effective control over the price paid as was exercised by Continental under the *Rayne* instrument. Further, such royalty interest owners exercise continuing control throughout the productive life of the well instead of being bound to a price schedule prescribed in the instrument as was the case in *Rayne*. Impact of exemption from rate regulation would flow through to consumers here as under the *Rayne* instrument.

3. The Evaluation by the Court Below of the Commission Hearing Record Is Erroneous.

The Court below faulted the Commission for failing to show with more particularity the anticipated economic burden upon consumers and the gas industry of exempting payments under market value gas royalty clauses from rate regulation. (Mobil, Pet. App. C, pp. 32-35). The hearing record is more adequate for this purpose in this case than was the case in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954).

In the *Rayne* case, which involved one gas field and an extremely small number of gas producers, the future impact of allowing use of technical concepts of local law to create gaps in Commission rate regulation could be

determined with reasonable accuracy. Such precise future impact can not be shown in the instant case involving jurisdiction over many thousands of royalty interest owners [13] in many hundreds of gas fields. The question before this Court in the *Phillips* case, *supra*, involved Commission rate jurisdiction to regulate rates of many thousands of producers in many hundreds of gas fields. Determination of future impact of non-regulation by contract prices in each producer contract with just and reasonable rates was not required, nor was prediction of impact on either an industry-wide or company-wide basis required.

In addition, the Commission findings on the record as to the conflict of non-regulation of rates with the purposes of the Natural Gas Act and participation of royalty interest owners in the economic incidents of gas rates that have an impact on consumer rates were not given the weight below that is required under the rule of the *Rayne* case, *supra*, and *Federal Power Commission* v. *Florida Power & Light Co.*, — U.S. —, 30 L.Ed. 2d 600 (1972). The operation of the area rate method of rate regulation, the relationship of gas payments to royalty interest owners to such method, and the relationship of payments to royalty interest owners to jurisdictional rates of gas are not matters outside Commission expertise; *cf. J. M. Huber Corp.* v. *Denman*, 367 F.2d 104 (5th Cir. 1966).

The suggestion below that the administrative burden of regulating rates paid to royalty owners is not justified because the impact of non-regulation has not been adequately demonstrated was rejected by this Court in the *Phillips* case and should be rejected here. The suggestion by the Court (Mobil, Pet. App. C, pp. 35, 36) that adverse impact can be kept under control by Federal Power Commission intervention in controversies between inde-

[13] Witnesses for The Land and Royalty Owners of Louisiana estimated the number to be hundreds of thousands in Louisiana alone.

pendent producers and royalty interest owners respecting the rate to be paid also was rejected as unsatisfactory in the *Phillips* case, and it is unsatisfactory here.

The findings of the Court below respecting administrative burden (Mobil, Pet. App. C, pp. 33-34) do not indicate acceptance of the policy of Section 154.91 of the Commission Regulations, 18 C.F.R., § 154.91, under which large numbers of interest owners can be and often are covered by a single rate schedule filing. The decision of the Commission contemplates that no additional rate schedule filings would be required (Mobil, Pet. App. D, p. 58). Even so, the administrative burden of processing rate schedule filings by royalty interest owners that may be required would be insignificant when compared to the burden of (1) reopening past and pending area rate proceedings, (2) revising the area rate method of regulation, and (3) intervening in state court suits brought by royalty owners which would be required if the opinion of the Court below is allowed to stand.

The facts that royalty interest owners are seeking payments at current market value as that value increases from time to time, and that there are many thousands of royalty owners, illustrates that the jurisdictional problem here is potentially widespread and of burdensome impact on consumers. The rates sought to be excluded from regulation here are rates under indefinite pricing clauses of unrestrained future impact that were of such concern to the Court in the *Phillips* case. Failure to predict precisely the potential burden on consumers of a gap in Commission rate regulation is not a reason for allowance of such gap here, any more than it was in the *Phillips* case.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

J. P. HAMMOND
WM. H. EMERSON
Amoco Production Company
P. O. Box 591
Tulsa, Oklahoma 74102

T. J. FILES
R. H. LANDT
Amoco Production Company
Security Life Building
Denver, Colorado 80202

Attorneys for Petitioner

March 14, 1972

APPENDIX

APPENDIX A

NAMES FURNISHED TO AMOCO PRODUCTION COMPANY BY MR. DALE M. STUCKY OF FLEESON, GOOING, COULSON & KITCH. 1600 WICHITA PLAZA BUILDING, WICHITA, KANSAS, AS NAMES OF PERSONS WHO HAVE EMPLOYED MR. STUCKY AND/OR MR. A. E. KRAMER OF KRAMER, NORDLING & NORDLING, P. O. BOX 969, HUGOTON, KANSAS, TO RECOVER FROM AMOCO PRODUCTION COMPANY IN *LELAND C. WAECHTER, ET AL.* v. *AMOCO PRODUCTION COMPANY*, CASE NO. 4656, DISTRICT COURT, STEVENS COUNTY, KANSAS.

Abram Abramson
1950 Lardner Street
Philadelphia, Pa.

H. D. Hyman Abramson
R.F.D. #2
Lancaster, Pa.

Lester N. Alexander
R.R. 1, Box 87
Satanta, Kansas

Florence D. Aller
1514 Barab Street
Moscow, Idaho

Alvin R. Aller
1514 Barab Street
Moscow, Idaho

Ralph W. (R.W.) Aller
Johnson, Kansas 67855

Agnes C. Anderson
710 W. Oak Street
Dodge City, Kansas

Mack Anderson
927 South McDonough Street
Decatur, Georgia

Carol Annis
Ulysses, Kansas

Charles Anton
Satanta, Kansas 67870

Marie R. Anton
Satanta, Kansas 67870

Robert D. Anton
Satanta, Kansas 67870

Norma May Anton
Satanta, Kansas 67870

L-M-T Associates
Box 987
Pratt, Kansas

A. P. Atkins
Box 470
Guymon, Oklahoma

Marilyn Russell Arensman
24355 West 10½ Mile Road
Southfield, Mich. 48075

J. F. Austin
Box 6767
San Antonio, Texas

G. W. Avery
Donna, Texas

Mary Golda Backus
1320 Lucille Avenue
Venice, California 90291

L. W. Bailey
Manter, Kansas 67862

Fannie Bailey
Manter, Kansas 67862

R. T. Bainbridge
Trailer Estates
Box 5441
Bradenton, Florida

Edwin Felts Baldwin
1115 Sherman Way
Sun Valley, California

Maxine Glenn Barber
Rt. 1
Ponderosa Trailer Court
Emporia, Kansas

Della M. Barchet
Laken, Kansas 67860

Virginia L. Barnett
341 No. Waverly
Orange, California

Eula M. Barr
Leoti, Kansas 67861

Ellen W. Batchelor
625 Ocean Avenue
Brooklyn, New York 11226

Ruth Gordon Batchelor
625 Ocean Avenue
Brooklyn, New York 11226

Robert W. Baughman
Box 1178
Liberal, Kansas

John W. Baughman Trust Estate
Box 1178
Liberal, Kansas

R. T. Beaty
Kendall, Kansas

George R. Bell
Lakin, Kansas

Alma Anton Benson
& Donald D. Benson
Talmoon Rural Station
Deer River, Minn. 56637

Georgia Anton Benson
Talmoon Station
Deer River, Minn. 56637

Joseph V. Benson
Talmoon Station
Deer River, Minn. 56637

Carl E. Bentrup
P. O. Box 203
Deerfield, Kansas

Eldor E. Bentrup
Deerfield, Kansas

Henry D. Bentrup
1012 Fifth Street
Garden City, Kansas

Paul F. Bentrup
Deerfield, Kansas

Rose Bentrup
Deerfield, Kansas

Walter C. Bentrup
305 K Street
Monroe, Louisiana

Eunice G. Bergen
Goessel, Kansas

Barbara J. Beymer
Laken, Kansas 67860

C. E. Beymer
Lakin, Kansas 67860

J. E. Beymer
Lakin, Kansas 67860

Mrs. Gladys P. Birket
107 Norman Road
Hutchinson, Kansas

Helen L. Bixler
2752 S. Fillmore
Denver, Colorado

Ida P. Blue
Stratton, Nebraska

LaVerne E. Blumenshine
107 No. Spruce Street
Washington, Ill. 61571

Eugene H. Bosworth
575 Ballentyne Way
Reno, Nevada 89502

Warren Bowker
Richfield, Kansas

Iona P. Boyd
Imperial Route
Garden City, Kansas 67846

John S. Boyd
Imperial Route
Garden City, Kansas 67846

Boyer Educational Trust
By: Dwight Holt, Oxford, Kansas
E. M. Peters, Wellington, Kansas
Robert Cobean, Wellington, Kansas
Trustees

Joyce Haskell Braddock
677 N. 11th Street
Garden City, Kansas 67846

Harold Hale Branine
4801 Fairmount
Kansas City, Missouri

H. R. Branine
204 West 19th Street
Hutchinson, Kansas

Roy G. Breithaupt
R. R. 1
Eudora, Kansas

Arthur H. Brinkmeyer
Imperial Route
Garden City, Kansas

Marjorie Brinkmeyer
Imperial Route
Garden City, Kansas

Mary K. Brown
833 E. Edgemont
Phoenix 6, Arizona

Oliver S. Brown
Box 1178
Liberal Kansas

Nina C. Buckmaster
7640 Marty
Overland Park, Kansas

Hattie Faldtz Buell
701 N. 7th Street
Garden City, Kansas 67846

D. W. Burden
Ulysses, Kansas

J. L. Burden
Lakin, Kansas

Gilbert T. Burns
2718 N. 76th Court
Elmwood Park, Illinois

Lucille Hicks Burnside
P. O. Box 336
Santa Maria, Calif. 93456

Eloise Burt
1020 N. Maple
McPherson, Kansas 67460

Joseph M. Byers
Ulysses, Kansas

Ora O. Byers
Ulysses, Kansas

Carl B. Campbell
18 Cedar Hills
Lamar, Colorado

Gladys E. Campbell
Lakin, Kansas

Herbert Campbell
Johnson, Kansas

John S. Campbell
Lakin, Kansas

Maxine W. Campbell
Lakin, Kansas

Mrs. Bessie Carscallen
111 S. Adams Street
Denver, Colorado 80210

Beth Chadd
Greensburg, Kansas

Nina O. Chamberlain
2621 E. LaPalma
Suite 136
Anaheim, California 92806

Chester C. Clark and
Lena M. Clark
108 No. Main Street
Hoisington, Kansas 67544

C. S. Clayton
West 17th Street
Larned, Kansas

Edith Clements
Box 262
Marietta, Oklahoma

David N. Clevenger
905 Fourth Street
Dodge City, Kansas

Felicity K. Cohen & Dorothy B. Mayer
c/o Stepher Mayer
7502 Leesburg Pl.
Bethesda, Maryland 20034

Edith A. Collins
3101 Boswell
Topeka, Kansas

Ruth E. Convis
1309 N. Clinton Blvd.
Bloomington, Ill. 61701

Ester Carter Conway
825 Dudley Drive
Shreveport, Louisiana

Clarence Collins
Rt. 2
Ulysses, Kansas

Helen Coons
Lakin, Kansas 67860

Florence E. Cooper
P. O. Box 74
Jacksonville, Illinois 62650

Lucille M. Crow
9421 E. Apache Trail
Space 112
Mesa, Arizona 85201

Florence Shaffer Croy
2928 Laurel Street
San Diego, California

Ruby Ethel Cundiff
398 East Market Street
Harrisonburg, Virginia 22801

Raymond A. Damerell
739 North Olive
Anaheim, California

Albert Daniels
Johnson, Kansas

Alta Mae Daniels
Johnson, Kansas

C. C. Daniel
& Clara N. Daniel
Richfield, Kansas 67953

James L. Darling
P. O. Box 111
Borrego Springs, Colorado

Flavy E. Davis
1030 Bank of the Southwest Bldg.
Houston, Texas 77002

Elizabeth J. Dawdy
621 South 12th Street
Salina, Kansas

Jennie M. Dickey
c/o John Pryor Dickey
717 Main Street
Newton, Kansas

John B. Dickey, Jr., Estate
c/o John Pryor Dickey
Robert A. Haury
Lelus B. Brown,
Co-Executors
717 Main Street
Newton, Kansas

Ruth Page Dickey
610 N. 10th
DeKalb, Ill. 60115

Ermine Dimitt
Johnson, Kansas

Catharine C. Van Doren
Deerfield, Kansas

H. N. Van Doren
Deerfield, Kansas

Besse B. Dotson
414 W. Main
Lyons, Kansas 67554

Edna H. Price Dotzour
P. O. Box 217
Norwich, Kansas

Grover C. Dotzour
1341 No. River Blvd.
Wichita, Kansas 67203

R. P. Dotzour
P. O. Box 217
Norwich, Kansas

Opal M. Dowdall
417 W. 8th
Beardstown, Illinois 62618

Ernest R. Downie
2327 West 29th North
Wichita, Kansas 67204

J. H. Doyle
Lakin, Kansas

Lavon C. Doyle
Lakin, Kansas

George Drew
Rolla, Kansas

Howard Drew
Hugoton, Kansas 67951

James Drew
17121 Francisquite Avenue
West Covina, Calif. 91790

Lois K. Dunn
Richfield, Kansas 67953

Wallace A. Dunn
Richfield, Kansas 67953

Ernest E. Durham
P. O. Box 139
Sonora, California

Edward A. Dyck
Rt. 3
Hutchinson, Kansas 67501

Edward A. Dyck &
Meribeth H. Dyck
Rt. 3
Hutchinson, Kansas 67501

Elvra Eastin
Johnson, Kansas 67855

Robert E. Eastin
Johnson, Kansas 67855

Norman C. Eatinger
Lakin, Kansas

Felix R. Edmission
Johnson, Kansas 67855

Maude J. Edmission
Johnson, Kansas 67855

Evelyn Emberton, Attorney
in Fact for Monzell Emberton
811 N. Sherman
Liberal, Kansas 67901

Evelyn Emberton, Trustee
vor Von Ceil Emberton, a Minor
811 North Sherman
Liberal, Kansas 67901

Evelyn Emberton, Trustee
for Michell Emberton, a Minor
811 N. Sherman
Liberal, Kansas 67901

Henry A. Esser
608 S. Main St.
Washington, Ill. 61571

Benjamin E. Evans
105 West Broadway
Stafford, Kansas 67578

Dortha Mae Evans
R.R. 3
Ulysses, Kansas

Homer O. Evans
R.R. 3
Ulysses, Kansas

Ada Eveleigh
Lakin, Kansas

Margaret E. Rook Failing
5233 North Pennsylvania St.
Indianapolis, Indiana

Egnar Fadtz
237 South Avenue 52
Los Angeles, California

Robert Alan Faurot
by Robert A. Faurot, Guardian
415 Chestnut
Halstead, Kansas

Barbara Ellen Faurot
by Robert Faurot, Guardian
415 Chestnut
Halstead, Kansas

Delia Feaster
Warsaw, Missouri

Homer Ferguson
1019 N. Walnut
McPherson, Kansas

Sam Finkelstein
108 N. Main
Hutchinson, Kansas

Gerald G. Finley
Imperial Route
Garden City, Kansas

June Cora Fitzimmons
P. O. Box 23
Macksville, Kansas

Florence Tate Flecher
Lakin, Kansas 67860

Murray Fletcher
Lakin, Kansas 67860

Susannah F. Fletcher
Lakin, Kansas 67860

Carson Floyd
Syracuse, Kansas

Gerald W. Foley
P. O. Box 332
Atchieson, Kansas

Marie Fractman
108 N. Main
Hutchison, Kansas

Hazel I. Friend, Executor
William Friend Estate
16910 Bixby
Bellflower, Calif.

Hazel I. Friend
16910 Bixby
Bellflower, California

Clair D. Fyter, Executor
of the Estate of Geo. B.
Seegrest, Sr., Deceased
Seegrest Oil Properties
P. O. Box 1052
Hutchison, Kansas 67501

B. T. Gale
c/o First Trust Company of
Saint Paul
Oliver W. Hedeen, V.P.
Saint Paul, Minn. 55101

Ruth M. Gall
460 Palomer Drive
Hemet, Calif. 92343

Charles E. Garey
Route 2
Johnson, Kansas 67855

Irene Garey
Route 2
Johnson, Kansas 67855

Melba Garey
P. O. Box 14
Big Bow, Kansas

Melvin Garey
P. O. Box 14
Big Bow, Kansas

Gertrude Gebaroff
3718 N. E. 70th
Seattle 51, Washington

Loyde A. Gerber
Imperial Route
Garden City, Kansas 67846

Jean C. Gerstl
Rt. 2, Box 546 C
Stand Point, Wisconsin 54481

Beulah K. Gillespie
501 E. Cemetery Ave.
Chenoa, Illinois 61726

Mrs. Elva Gillespie
522 Cemetery Ave.
Chenoa, Illinois

Mrs. Kathleen Glamser
Route 1
Benedict, Kansas 66714

Vivian C. Glenn
Johnson, Kansas

J. L. Goertzen
Inman, Kansas 67546

Jeanne Thorpe Goodnight
P. O. Box 692
Lakin, Kansas

Willard J. Graber P.O.A.
22-30 West First
Hutchinson, Kansas

George Gropp
Deerfield, Kansas

Arthur Gropp
5113 Western Ave., N. W.
Washington, D. C. 20016

Bertha Gross
North Center
Garden City, Kansas

Rozella M. Glenn
Route 1
Johnson, Kansas 67855

P. H. Goertzen
310 West 23
Hutchinson, Kansas

W. T. Haley
Route 1
Austin, Colorado

Dollie F. Hall
237 S. Avenue 52
Los Angeles, Calif. 90042

J. W. Hambleton
North Center
Garden City, Kansas 67846

Bessie Hambleton
North Center
Garden City, Kansas 67846

J. C. & Ella Hand
1311 Central Ave.
Dodge City, Kansas

George F. Hamman
2185 N. Riverside Blvd.
Wichita, Kansas

Fielding Hands
South Star Route
Garden City, Kansas 67846

Jean Hands
South Star Route
Garden City, Kansas 67846

Lucille P. Morlan Hansen
1723 E. Yale
Fresno, California

Raymond Hardesty
Hamlet, Indiana

W. F. Harkrader
P. O. Box 987
Pratt, Kansas

Louella Harkrader
P. O. Box 987
Pratt, Kansas

Evelyn Poulsen Harris
and Car. Harris
705 Madrona, S.E.
Salem, Oregon

Drew (Andrew S.) Hartnett
6 Crestview Drive
Salina, Kansas 67401

O. L. Hatfield and Ralph Bane
Executors of the Estate of
William H. Hatfield, Deceased
1108 North Carlton
Liberal, Kansas 67901

Lois Ruth Van Pattern
Heimlicher
4326 Bertrand Road
Indianapolis, Indiana

Sara C. Heinrichs
Canton, Kansas

Sam R. Heller, Trustee
W. F. Duckwall Trust
Abilene, Kansas

Vivian I. Heminger (Mrs. C. E.)
Leawood, Kansas

Minnie M. Helmle
510 N. 5th Street
Garden City, Kansas 67846

Charles M. Helmle
510 N. 5th Street
Garden City, Kansas 67846

James R. Hickok
Johnson, Kansas

Susie Hiebert
Route 3
Ulysses, Kansas 67880

John Hiebert
Route 3
Ulysses, Kansas

Susie Wiebe Hibert, Guardian
Route 3
Ulysses, Kansas 67880

Ella Catherine Highfill
1716 Colidge
Wichita, Kansas

Zilphia M. Hille
390 South Alder
Colvilles, Washington

Suzanne Himmelwright
P. O. Box 987
Pratt, Kansas

Lucille Hoar
Lewis, Kansas 67552

Margaret Hoyt
Route Box 10
Lakin, Kansas

Matilda Hoffman
104 Grant
Washington, Illinois

Esther Hubbard
P. O. Box 2042
Pueblo, Colorado 81004

Virgil Hubbard
Lakin, Kansas

Wray S. Hudkins
Box W
Scappoose, Oregon

Ross D. Hogue
1st National Bank Bldg.
Dodge City, Kansas 67801

Dolores J. Holland
433 E. 4th
Russell, Kansas

Edna Colegrove Hornberger
Route 5
Neosho, Missouri

Frederick Olen Hunt
P. O. Box 10644
Raleigh, North Carolina 27605

Delacy Pearl Hunt
P. O. Box 10644
Raleigh, North Carolina 27605

Dorothy M. Hurst
Johnson, Kansas 67855

Roger E. Hurst
Johnson, Kansas 67855

D. G. Hutton
8441 Jumilla Avenue
Canoga Park, California

J. R. Hutten
Laken, Kansas

Reba Jeanne Inscho
305 S. Poinsettia
Manhattan Beach, Calif.

R. S. Irwin
P. O. Box 70
Johnson, Kansas 67855

Rachel J. Irwin
P. O. Box 70
Johnson, Kansas 67855

Katharine Roach Jackson
480 Oak Street
Winnetka, Illinois

Dorothy L. Jennings
P. O. Box 987
Pratt, Kansas

Homer C. Jennings
804 Wiley Bldg.
Hutchinson, Kansas

Bertha B. Jones
Johnson, Kansas 67855

John R. Jones
Johnson, Kansas 67855

Mary A. Jones
P. O. Box 489
Johnson, Kansas

Roger C. Jones
Johnson, Kansas 67855

Winnie Lou Jones
P. O. Box 6767
San Antonio, Texas

Martin R. Johns & Helen Esther Johns
Johnson, Kansas

Dorothy E. Johnson
1807 North Main
Hutchinson, Kansas

Gracia Beeler Johnston
Kinsley, Kansas

Lois L. Johnston
P. O. Box 1519
Houston, Texas

H. W. Joslin
130 Hidden Valley Lane
San Anselmo, California

Ivan L. Josserand
Johnson, Kansas 67855

Mrs. Ivan Josserand
Johnson, Kansas 67855

Orvan E. Josserand
Johnson, Kansas 67855

Pearl Josserand
Johnson, Kansas 67855

Ella Mae Julian
Johnson, Kansas 67855

Laura Julian
Johnson, Kansas

Milton E. Julian
Johnson, Kansas

Stanley Julian
Johnson, Kansas

Theodore J. Julian
Johnson, Kansas

C. H. Karnes
7328 Ash
Prairie Village, Kansas

Sarah M. Karnes
7328 Ash
Prairie Village, Kansas

Lillian Wherritt Karn
6445 Luzon Avenue, N. W.
Washington, D. C.

Edna Earle Kellem
3355 Wilshire Blvd.
Los Angeles, Calif. 90005

Mrs. Minnie Kell
1023 Indian Hill
Pomona, Calif.

E. Kendrick and Arlyn A. Kendrick
Johnson, Kansas

Mrs. Leonard Kennedy
Route 1
Ulysses, Kansas 67880

Armin Kettler
Deerfield, Kansas

Mrs. Meta Kettler
Deerfield, Kansas 67838

John L. Kirby
1646 East Elm Street
Springfield, Missouri

Anna V. Klassen
P. O. Box 21
Lehigh, Kansas

Carl O. F. Kleeman
Plymouth, Nebraska

E. L. Kleeman
Lakin, Kansas

Ernest E. W. Kleeman
Plymouth, Nebraska

Fred Kleeman
Lakin, Kansas

Henry Kleeman
Lakin, Kansas

Miss Marie W. E. Kleeman
Plymouth, Nebraska

Mary Kleeman
Lakin, Kansas

Nellie Kleeman
Lakin, Kansas

Elma J. Klepper
2601 North Broadway
Wichita, Kansas

James T. Klepper
2601 North Broadway
Wichita, Kansas

Lois R. Kliewer
Route 2
Ulysses, Kansas 67880

John C. & Julia M. Koeing
Cove, Oregon

Leonard Vernon Koenig
Raymond, Kansas

Gustav H. Krehbiel
712 West Loula Street
Olathe, Kansas

Gertrude H. Krehbiel
712 West Loula Street
Olathe, Kansas

Kenneth L. Krehbiel
Rt. 2, Box 4-F
Lindsborg, Kansas

Albert H. Kurg
15614 Cicero Avenue
Oak Forest, Illinois

Lillian Kurg
15614 Cicero Avenue
Oak Forest, Illinois

Myrtle Marie Kurtz
302 S. 5th Street
Nyssa, Oregon

W. L. Lacey
5722 S. Minnie
Wichita, Kansas 67200

Lannon Trust
by R. J. Lannon, Trustee
Saunemin, Illinois

Robert Larrabee, Executor of
the Estate of Lee Larrabee,
Dec'd.
P. O. Box 1009
Liberal, Kansas

J. T. Lear
1609 North Main
Garden City, Kansas

J. T. & Alice Lear
1609 North Main
Garden City, Kansas

Glenn A. Lehmann
Halstead, Kansas

R. V. Lehner
P. O. Box 398
Ness City, Kansas

George C. Lemon
P. O. Box 987
Pratt, Kansas

George C. Lemon, W. F. Harkrader, Howard L. Miller & Glen Woolfolk by George C. Lemon for Trustees
P. O. Box 987
Pratt, Kansas

J. C. Lemon
P. C. Box 987
Pratt, Kansas

J. C. Lemon, P. L. Miller, W. F. Harkrader & Glen Woolfolk, Trustees for Lemon-Miller Trust #1
P. O. Box 987
Pratt, Kansas

Lemon & Miller Partnership
P. O. Box 987
Pratt, Kansas

James E. Light
Rolla, Kansas

Mary F. Light
Rolla, Kansas

C. W. Lindner
Kendall, Kansas

Merl B. Lindner
Kendall, Kansas

Lucy Ann Linenberger
1609 York Street
Garden City, Kansas 67846

Marie Linke
& Berhard E. Linke
Route 2
Great Bend, Kansas

Sayde E. Logan
372 Franklin Avenue
Wyckoff, New Jersey

Ralph G. Long
Johnson, Kansas

Mable Long
Johnson, Kansas

Etta Jane Lottridge
Medicine Lodge, Kansas

Carl R. Lucas
Johnson, Kansas 67855

Charles Lucas
Johnson, Kansas 67855

Ida Lucas
Lewis, Kansas

James W. Lucas
Leon, Kansas

Stella M. Lucas
Johnson, Kansas 67855

Nyrna Lucas
Johnson, Kansas 67855

Grace M. Malherek
Granada, Minn.

J. B. Malone
P. O. Box 31
Big Bow, Kansas

Maude Malone
P. O. Box 31
Big Bow, Kansas

Pauline Malone
6412 E. Murdock
Wichita, Kansas 67200

Leah C. (Ross) Manlove, Natural
Guardian of Donna & Mark Ross
808 E. 36th Street
Topeka, Kansas

Ulanda Schartz Marmie
by M. E. Marmie, Executor
Great Bend, Kansas

C. A. Marquardt Estate
Stella A. Marquardt, Exec.
Lakin, Kansas 67860

Stella A. Marquardt
Lakin, Kansas 67860

Lela Z. Martin
Ulysses, Kansas

Ora V. Martin
Ulysses, Kansas

Robert D. Martin
Johnson, Kansas

Velma B. Martin
P. O. Box 484
Ulysses, Kansas

Carl F. Matzen
1115 North Edgemoor
Wichita, Kansas

Mary S. Matzen
1115 North Elgemoor
Wichita, Kansas

R. Fred Maxwell
P. O. Box 372
Ulysses, Kansas

C. Alex McBurney
Stater, Missouri

E. C. McBurney
9800 Sunset Avenue
La Mesa, California

Helen McBurney
Stater, Missouri

Virginia McBurney
9800 Sunset Avenue
La Mesa, California

Elizabeth K. McCarty
295 Oakland Avenue
Council Bluffs, Iowa

Gary McCarty
Gove, Kansas

Bette L. McCoy
P. O. Box 987
Pratt, Kansas

E. R. McCue
Lakin, Kansas 67860

Devena M. McGee
7100 E. 75th Place
Commerce City, Colorado

Dorothy Drew McKinley
Route 2
Norton, Kansas 67654

J. B. McLaughlin
2805 N. Hudson
Oklahoma City, Oklahoma

Edyna McLaughlin
2805 N. Hudson
Oklahoma City, Oklahoma

Paul H. McMichael
609 Jenny
Garden City, Kansas

Marvin McMichael
1705 N. 10th
Garden City, Kansas

William H. McMichael
Lakin, Kansas

Emily McMillan
P. O. Box 133
Granada, Colorado

Noble M. Melencamp
806 Second Avenue
Dodge City, Kansas

Ruth Melton
822 S. Nevada Avenue
Colorado Springs, Colo. 80902

Georgie Menn
310 W. 49th
Kansas City, Missouri

Roy E. Menn
310 W. 49th
Kansas City, Missouri

Beulah Meyer
913 Center Street
Garden City, Kansas

Midhurst Oil Corporation
1030 Bank of the Southwest Bldg.
Houston, Texas 77002

P. E. Milburn
P. O. Box 162
Rolla, Kansas 67954

Elver C. Milburn
Rolla, Kansas 67954

Estelene (Flora E.) Milburn
Rolla, Kansas 67954

B. C. Miles
Lakin, Kansas

Virgil I. Miles
5273 Montecito Dr.
Bakersfield, Calif.

Christabelle F. Miller
2116 Golden Rain Road #3
Walnut Creek, California

Hattie M. Miller
P. O. Box 174
Depew, Oklahoma

Howard L. Miller
P. O. Box 987
Pratt, Kansas

Pauline L. Miller
P. O. Box 987
Pratt, Kansas

Emma Marie Molz
Deerfield, Kansas

Henry O. Molz
Deerfield, Kansas

Hazel Montgomery
5202 E. Third
Wichita, Kansas

Joe E. Montgomery
5202 E. Third
Wichita, Kansas

Ella M. Moor
2402 Jules St.
St. Joseph, Missouri 64501

T. F. Moor
2402 Jules St.
St. Joseph, Missouri 64501

Patricia Ann Moorer
2044 Willingham Drive
Richardson, Texas 75080

C. C. Morris Estate
Bernard E. Nordling, Adm.
with Will Annexed
P. O. Box 969
Hugoton, Kansas 67951

G. Delbert Morris, Exec.
of Marshall R. Weltner, Deceased
2308 West 30th St.
Los Angeles, Calif. 90018

Harry C.Morris
Rolla, Kansas

Leda Morrison
404 South Oak Street
Pratt, Kansas

Albert D. Merhbiel
Pretty Prairie, Kansas

Lesta L. Muse
P. O. Box 27
Rolla, Kansas

Scott Muse, Jr.
P. O. Box 27
Rolla, Kansas

William T. Myler
Johnson, Kansas 67855
Donald Neff
Lakin, Kansas

E. G. Neff
Lakin, Kansas

H. O. Neff
788 The Petroleum Building
Tyler, Texas

Vernon M. Neff
Lakin, Kansas

E. G. Neighbor and
D. H. Neighbor
3617 Johnson Drive
Shawnee Mission, Kansas

Gladys E. Newby, Exec.
Estate of Carl T. Newby,
Deceased
124 N. Lincoln Ave.
Springfield, Illinois

Ralph J. Newby
321 West 6th Street
Hutchinson, Kansas

Katy K. Newfildt
Sunshine Home
Butler, Kansas

Marjorie M. Newton
Manter, Kansas

Marian O. Norby
Apartment 620
1301 South Scott
Arlington, Va. 22207

Leland Nordling
Johnson, Kansas

Loren C. Northcutt
Gopeland, Kansas

Melvin O. Nuss
Nuss Building
Lakin at Baker St.
Great Bend, Kansas 67530

Ruth H. Nuss
Nuss Building
Lakin at Baker St.
Great Bend, Kansas 67530

Mary Ellen Olson &
A. L. Olson
807 N. Durham
Ulysses, Kansas 67880

Geneva W. Orem
P. O. Box 99
Guymon, Oklahoma

Gary D. Paddach
1332 South Edison Way
Denver, Colorado

Larry K. Paddach
Los Angeles, California

Lowell H. Paddach
Minot, North Dakota
Merle R. Paddach
Route 3
Brownfield, Texas

Dorothy Jean Palmquist
P. O. Box 888
Topeka, Kansas

Lela M. Pettig
405 South Granite
Deming, New Mexico

H. W. Pettijohn
(Juliet Denious, Gdn.)
1109 First Avenue
Dodge City, Kansas

Viola E. Pfeffinger
5504 Prospect Road
Peoria, Illinois

Everett E. Phillips
Hugoton, Kansas 67951

Stella Phillips
Hugoton, Kansas 67951

George Pibley
Lamar, Colorado

Harold W. Pikler
P. O. Box 329
Loveland, Colorado

W. V. Pirtle
& Barbara Louise Pirtle
P. O. Box 843
Dalhart, Texas 79022

Roy I. Platt
Medicine Lodge, Kansas

J. B. Porter
2760 South Kearny
Denver, Colorado 80222

Jack W. Porter
Hugoton, Kansas

Frieda C. Powers
1205 Circle Drive
Garden City, Kansas 67846

Thurman H. Printz
416 West 5th Street
Liberal, Kansas 67901

August Proksch
Route 3, Box 20
Hoisington, Kansas

Frank Proksch
Route 3, Box 20
Hoisington, Kansas

Fred M. Proksch
Star Route
Sublette, Kansas

Hattie Proksch
Route 3, Box 20
Hoisington, Kansas

Hubert Proksch
Route 3, Box 20
Hoisington, Kansas

Joe H. Proksch
Star Route
Sublette, Kansas

John F. Proksch
Route 3, Box 20
Hoisington, Kansas

Ludwig Proksch
Star Route
Sublette, Kansas

Harold Purdy
Deerfield, Kansas

Ruth A. Purdy
Deerfield, Kansas

Lois C. Putman
93 Eleventh Street
Chillicothe, Missouri

Viola A. Raduechel
Route 3
Wausau, Wisconsin 54401

Olivia F. Ramsey
1458 Dexter
Denver, Colorado 80229

Roger H. Ramsey
Garden City, Kansas

Mary Hicks Raymond
2719 Kathryn Avenue, S. E.
Albuquerque, New Mexico

Albert G. Redinger, Ind. and as Cdn. of Estate of Eva Redinger
P. O Box 598
Ulysses, Kansas 67880

M. L. Reeves
P. O. Box 1215
Ulysses, Kansas

Richfield Methodist Church
Richfield, Kansas 67953

Mildred Caroline Ricker
Raymond, Kansas

Mary Page Robbins
2000 Tulare
Selma, California

Lois H. Roberts
1817 North Quinn Street
Arlington, Virginia

Robert R. Robertson
3718 E. 70th
Seattle 51, Washington

L. F. Roderick
Lakin, Kansas

Thomas H. Rogers
354 Orchard Street
New Bedford, Mass.

Ray Rohlman
P. O. Box 643
Syracuse, Kansas

Marjorie Cole Romersi
2049 E. Orange Grove Blvd.
Pasadena, California

Fay P. Ross
Halstead, Kansas

Cecil Sargeant
R.F.D. 1, Box 162
Montesano, Washington 98563

D. J. Sargeant
Rt. 2, Box 83
Lebanon, Oregon

M. Scarborough
Apt. 125 - Mayfair Apartments
1220 North McCullough
San Antonio, Texas

Bernard P. Schartz
407 West 4th Street
Ellinwood, Kansas

Frank N. Schartz
Suite 201, McBride Bldg.
Great Bend, Kansas

Frank N. Schartz, Guardian of Mary Ann & Frances Geralyn Schartz, Minors
Suite 201, McBride Bldg.
Great Bend, Kansas

Elsie Schartz
Route 2
Ellinwood, Kansas 67526

Irene H. Schartz
407 West 4th Street
Ellinwood, Kansas

Wilfred Schartz
Route 2
Ellinwood, Kansas 67526

Lydia Schneck
816 Carroll
Larned, Kansas

Emil Schnellbacher
Satanta, Kansas

O. A. Schopf
P. O. Box 334
Holcomb, Kansas

Mary Schrieber
903 Theron Place
Garden City, Kansas

Mrs. L. M. Seigel
Barnum, Iowa

W. J. Seigel
16 Oak Ave.
Tenafly, New Jersey

Kenneth E. Sentney
211 Wolcott Building
Hutchinson, Kansas

Edna E. Shankland
Hamlet, Indiana

Fred Shore
Big Bow, Kansas

Hazel Shore
Big Bow, Kansas

Ione Shore
Johnson, Kansas

John Shore
Johnson, Kansas

Lee Shore
Ulysses, Kansas

Charles Shorter
Ulysses, Kansas

Philip Shorter
Route 3, Box 96
Ulysses, Kansas 67880

Margene Shorter
Route 3, Box 96
Ulysses, Kansas 67880

Vera Shorter
Route 3, Box 96
Ulysses, Kansas 67880

Miriam E. Sickmann
110 N. W. 10th Street
Richmond, Indiana

Claudie E. Sigler
Boone, Colorado

L. M. Sloan
P. O. Box 273
Stafford, Kansas

Bessie Smith
404 South Oak Street
Pratt, Kansas

George Rockwell Smith
1400 N. Woodlawn
Wichita, Kansas

Joseph W. Smith
107 North 12th Street
Lamar, Colorado 81052

Louise Smith
321 South Pine Street
Pratt, Kansas

Louise Corbett Smith
926 E. Polur Ave.
Orange, Calif. 92669

Mildred Smith
1717 N. Sabin
Wichita, Kansas

Russell Smith
908-500 Line Building
Minneapolis, Minn.

Marian Hershey Southern
409 Pembroke Lane
Ellinwood, Kansas

Winifred Southworth
701 Powell Street
Williamsburg, Virginia

Marie E. Spires
P. O. Box 363
Ulysses, Kansas 67880

Albert H. Sprunger
Route 1
Satanta, Kansas

L. O. Stanley
P. O. Box 335
Satanta, Kansas

Dallas Stennis
Deerfield, Kansas

Anthony J. Strasser
1014 N. 1st St.
Garden City, Kansas

Cecil R. Stayton
135 Palo Inn Road
El Paso, Texas

John Stewart, III
P. O. Box 2
Wellington, Kansas

Earl W. Strong
Nashville, Kansas 67112

Thelma Strong
P. O. Box 127
Nashville, Kansas 67112

Pearl Krehbiel Stucky
Haven, Kansas

Cecil W. Sturgeon
P. O. Box 698
Dodge City, Kansas 67801

Dan C. Sullivan, Jr.
202 North Hickok
Ulysses, Kansas

Dan C. Sullivan, Sr., Estate by
Dan C. Sullivan, Jr., Exec.
202 North Hickok
Ulysses, Kansas

Goldie Sullivan
Ulysses, Kansas 67855

J. P. Sullivan
Ulysses, Kansas 67855

Loretta Sullivan
202 North Hickok
Ulysses, Kansas

Sullivan Investments
Ulysses, Kansas

Geraldine S. Summer
302 Highland Place
Washington, Illinois

Sylvia C. Swanson
1425 Church Street
Evanston, Illinois

C. C. Swayze
Bucklin, Kansas

George Taton
Santanta, Kansas

Eleanor V. Taylor
3301 N. George Mason Dr.
Arlington 7, Virginia

D. L. Thomas
Kismet, Kansas

E. Vivian Thomas
R. O. Box 624
Lakin, Kansas 67860

Hallie Thomas
129 Trescony
Santa Cruz, Calif.

Opal Thomas
Kismet, Kansas

Leonard Thompson
131 South Durham
Ulysses, Kansas

Leroy C. Thornburg
R. R. 2
Chandler, Oklahoma 74834

Marie Thornburg
R. R. 2
Chandler, Oklahoma 74834

Monzie Thorpe
1604 Oakhurst
Reno, Nevada

A. P. Timmons
Hugoton, Kansas

A. P. & Doris I. Timmons
Hugoton, Kansas

Emma E. Tolson
Route C, Box 13
Roach, Missouri 65787

Bertha Trostle
Nickerson, Kansas 67561

R. H. Trostle
Johnson, Kansas 67855

Estella C. Trotter
P. O. Box 7
Ayr, Nebraska

Victoria E. Trussell
P. O. Box 1218
Dodge City, Kansas

James M. Tucker, Attorney in
Fact for Samuel H. Mitchell, Dec.
Tucker & Tucker
Attorneys at Law
Paoli, Indiana

Fern Ulsh
Ulysses, Kansas 67880

Rolla G. Ulsch
Ulysses, Kansas 67880

David Vercimak
Route 3, Box 202
Mosinee, Wisconsin

George Vercimak, Jr.
Route 3, Box 202
Mosinee, Wisconsin

Leland C. Waechter
Lakin, Kansas

Eva M. Waldie
1925 South Market
Wichita, Kansas

Nina F. Wall
707 West Wilton
Norton, Kansas

Cecile L. Wallace
934 Cedar
Junction City, Kansas

Mrs. Harriet H. Walters
2312 Washington Ave.
Terre Haute, Indiana

Marion S. Waters
1026 Front, Apt. 9
Coeur D'Alene, Idaho

Ed M. Watkins
Sublette, Kansas

H. G. Webber
602 West Sykes
Ulysses, Kansas

Nova N. Webber
602 West Sykes
Ulysses, Kansas

Dorothy Thorpe Weber
6218 Glenwood
Mission, Kansas

Clarkson Webster
1225 Cleveland Avenue
Loveland, Colorado

Lora Wilson Webster
1225 Cleveland Avenue
Loveland, Colorado

George V. Welch
120 N. 7th Street
Canon City, Colorado

Ethel Winifred Weltner
4112 13th Street, N. W.
Washington, D. C.

Laura Edith Weltner
4112 13th Street, N. W.
Washington, D. C.

Louise Esther Wetherton
1026 Orleans
Topeka, Kansas

Clarence Wetherton, Deceased
by Louise Esther Wetherton
1026 Orleans
Topeka, Kansas

Elizabeth S. White
Lakin, Kansas

Harold White
Lakin, Kansas

Orlio A. White
Lakin, Kansas

Hazel E. Whitmore
208 Taylor Avenue
Salem, Virginia

Lester McClellan Whitmore
P. O. Box 148
Mukilteo, Washington

I. C. Wiatt
Lakin, Kansas 67860

H. E. Willett
Satanta, Kansas

Minnie Margaret Willett
Satanta, Kansas

Donald K. Williams
Star Route
Ulysses, Kansas 67880

Earl B. Williams
Route 3
Ulysses, Kansas

Helen Williams
Star Route
Ulysses, Kansas 67880

Mrs. Roxie A. Williams
215 N. Parkwood Lane
Wichita, Kansas

Mrs. Zoe Williams
525 Gardner
Joliet, Illinois

Harry Willis
Rolla, Kansas 67954

Hattie Willis
Rolla, Kansas 67954

Marjorie S. Wilson
811 N. Euclid Avenue
Oak Park, Illinois

Clarence Winger
Johnson, Kansas

Helen Winger
Johnson, Kansas

Melvin Winger
Johnson, Kansas

Charles Winter
by Almeda Dugan, Guardian
Milton, Kansas

Marcile N. Wood
618 South Wash
Ft. Collins, Colorado

Helen I. Woodford
1115 Greenwood Avenue
Canon City, Colorado

J. R. Wratil
101 Kansas Street
Larned, Kansas 67550

D. P. Young
Box 1077
Dodge City, Kansas

Maude B. Zimmet
707 N. Colorado
Ulysses, Kansas 67880

Abner J. Zook
Rt. W, Box 90
Larned, Kansas

Donald B. Zook
Rt. 2, Box 90
Larned, Kansas

Ida Zook
Rt. 2, Box 90
Larned, Kansas